

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

TRACY D. MARTIN et al.
(ENTER ABOVE THE NAME OF THE PLAINTIFF IN THIS ACTION)

IF THE PLAINTIFF IS A PRISONER: PRISONER # 735 406

vs.

Governor MIKE DeWINE et al.
(ENTER ABOVE THE NAME OF THE DEFENDANT IN THIS ACTION)

IF THERE ARE ADDITIONAL DEFENDANTS PLEASE LIST THEM:

Director Ohio Dept. of Rehab. and Corr.
Warden Lebanon Corr. Camp

1:20 CV 481

J. BARRETT

MJ. LITKOVITZ

RECEIVED

JUN 19 2020

RICHARD W. NAGEL
Clerk Of Court
CINCINNATI, OHIO

COMPLAINT

I. PARTIES TO THE ACTION:

PLAINTIFF: PLACE YOUR NAME AND ADDRESS ON THE LINES BELOW. THE ADDRESS YOU GIVE MUST BE THE ADDRESS THAT THE COURT MAY CONTACT YOU AND MAIL DOCUMENTS TO YOU. A TELEPHONE NUMBER IS REQUIRED.

TRACY D. MARTIN #735 406
NAME - FULL NAME PLEASE - PRINT

P.O. Box 56 Lebanon Corr. Camp
ADDRESS: STREET, CITY, STATE AND ZIP CODE

Lebanon, Ohio 45036

N/A
TELEPHONE NUMBER

IF THERE ARE ADDITIONAL PLAINTIFFS IN THIS SUIT, A SEPARATE PIECE OF PAPER SHOULD BE ATTACHED IMMEDIATELY BEHIND THIS PAGE WITH THEIR FULL NAMES, ADDRESSES AND TELEPHONE NUMBERS. IF NO ADDITIONAL PLAINTIFFS EXIST CONTINUE WITH THIS FORM.

PAGE 2 AND 3 OF THIS FORM DEAL ONLY WITH A PLAINTIFF THAT IS INCARCERATED AT THE TIME OF FILING THIS COMPLAINT.

IF YOU ARE A PRISONER FILING A CIVIL SUIT THE FOLLOWING INFORMATION IS
REQUIRED:

PREVIOUS LAWSUITS:

- A. HAVE YOU BEGUN OTHER LAWSUITS IN STATE OR FEDERAL COURT DEALING
WITH THE SAME FACTS INVOLVED IN THIS ACTION OR OTHERWISE RELATING
TO YOUR IMPRISONMENT? YES () NO ☒
- B. IF YOUR ANSWER TO A IS YES, DESCRIBE THE LAWSUIT IN THE SPACE BELOW.
(IF THERE IS MORE THAN ONE LAWSUIT, DESCRIBE THE ADDITIONAL
LAWSUITS ON ANOTHER PIECE OF PAPER, USING THE SAME OUTLINE.)

1. PARTIES TO THIS PREVIOUS LAWSUIT

PLAINTIFFS:

DEFENDANTS:

2. COURT (IF FEDERAL COURT, NAME THE DISTRICT: IF STATE COURT ,
NAME THE COUNTY)

3. DOCKET NUMBER

4. NAME OF THE JUDGE TO WHOM THE CASE WAS ASSIGNED

5. DISPOSITION (FOR EXAMPLE, WAS THE CASE DISMISSED? WAS IT
APPEALED? IS IT STILL PENDING?)

6. APPROXIMATE DATE OF THE FILING OF THE LAWSUIT

7. APPROXIMATE DATE OF THE DISPOSITION

PLACE OF PRESENT CONFINEMENT

A. IS THERE A PRISONER GRIEVANCE PROCEDURE IN THIS INSTITUTION?

YES ☒ NO ()

B. DID YOU PRESENT THE FACTS RELATING TO YOUR COMPLAINT IN THIS STATE PRISONER GRIEVANCE PROCEDURE? YES () NO ☒

C. IF YOUR ANSWER IS YES:

1. WHAT STEPS DID YOU TAKE?

2. WHAT WAS THE RESULT?

D. IF YOUR ANSWER IS NO, EXPLAIN WHY NOT.

The subject matter is way beyond the jurisdiction of a grievance committee.

E. IF THERE IS NO PRISON GRIEVANCE PROCEDURE IN THIS INSTITUTION, DID YOU COMPLAIN TO PRISON AUTHORITIES? YES () NO ()

F. IF YOUR ANSWER IS YES:

1. WHAT STEPS DID YOU TAKE?

2. WHAT WAS THE RESULT?

DEFENDANTS:

PLACE THE NAME AND ADDRESS OF EACH DEFENDANT YOU LISTED IN THE CAPTION ON THE FIRST PAGE OF THIS COMPLAINT. THIS FORM IS INVALID UNLESS EACH DEFENDANT APPEARS WITH FULL ADDRESS FOR PROPER SERVICE.

1. Governor MIKE DeWINE
NAMES - FULL NAME PLEASE
Ohio State house - 1 Capital Sq. Columbus, Ohio 43215
ADDRESS - STREET, CITY, STATE AND ZIP CODE
2. DIRECTOR ODRC ANNETTE CHAMBERS SMITH
4545 FISHER RD. suite D COLUMBUS, OHIO 43228
3. WARDEN LeCl (CHAE) HARRIS 3791 W. State Rt. 63
3791 West State Route 63 LEBANON, OHIO 45036
4. _____

5. _____

6. _____

IF THERE ARE ADDITIONAL DEFENDANTS, PLEASE CONTINUE LISTING THEM.

STATEMENT OF CLAIM

PLEASE WRITE AS BRIEFLY AS POSSIBLE THE FACTS OF YOUR CASE. DESCRIBE HOW EACH DEFENDANT IS INVOLVED. INCLUDE THE NAME OF ALL PERSONS INVOLVED. GIVE DATES AND PLACES.

DO NOT GIVE ANY LEGAL ARGUMENTS OR CITE ANY CASES OR STATUTES.

IF YOU HAVE A NUMBER OF DIFFERENT CLAIMS; PLEASE NUMBER AND SET FORTH EACH CLAIM IN A SEPARATE PARAGRAPH. USE AS MUCH SPACE AS YOU NEED. YOU ARE NOT LIMITED TO THE PAPERS WE GIVE YOU. ATTACH EXTRA SHEETS THAT DEAL WITH YOUR STATEMENT CLAIM IMMEDIATELY BEHIND THIS PIECE OF PAPER.

Governor MIKE DeWINE has shown a blatant and callous disregard for the prisoners held under his administration, violating state and federal law, subjecting them to death, fear of death, sickness, and unknown possible future ramifications through his policies concerning the COVID-19 pandemic. While he has great power to display mercy and humanity (not to mention fulfill his obligation) to preserve life and safety of prisoners who were not sentenced to death, and yet he fails to provide for the most vulnerable populace of Ohioans, which constitutes Cruel and Unusual Punishment, Excessive Punishment, Denial of Due Process of Law, as well as issues of basic human rights.

The World Health Organization's statistics for April 1, 2020 noted 823,626 global COVID-19 cases, 186,101 United States cases, and 40,598 deaths. While much is unknown about COVID-19, it is known that contact and much spread the virus.

On March 9, 2020 Governor DeWine issued Executive Order No. 2020-01D declaring a state of emergency acknowledging COVID-19 as "a potentially dangerous condition which may affect the health, safety, and welfare...". This shows he knew then of the danger of the virus. On March 14, 2020, the Ohio Health Department acknowledged that large gatherings of people "increased the risk of transmission of COVID-19." Being aware of the dangers of large gatherings, Governor DeWINE closed all K-12 schools, polling places, and child care facilities in the state of Ohio. Governor DeWINE stated, "All public and private gatherings of any number of people occurring outside of a single household or living unit are prohibited." He further stated, "Any gathering of more than 10 people is prohibited." Governor DeWINE implemented the Social Distancing Requirement, where there is maintaining at least six feet distance between people, plus regular cleaning of high touch surfaces. Therefore, without any doubt Governor DeWINE was aware of the circumstances and safety needs to curb the deadly potential of this virus.

On March 22, 2020 Governor MIKE DeWINE, being fully aware that for prisoners, particularly those like the plaintiffs, who are at the lowest security level, social distancing is impossible

as well as the cleaning process itself, not to mention the accessibility to adequate health care, turned his back on these soon to be released prisoners, refusing to even mention their condition in his numerous news briefings, and legally exempted them from Executive Order No. 2020-01D. In some ironic juxtaposition, prisoners who are wards of the state, were excluded from his own imposed law, being a second degree misdemeanor, thereby quasi-legally denying them safety and sentencing them to possible death. In this one action Governor DeWINE displayed culpability to Denial of Due Process, Excessive Punishment, and Cruel and Unusual Punishment.

On April 21, 2020 The Cleveland Plain Dealer reported that 80% of Marion Correctional Institution had tested positive for COVID-19, that was 16% of Ohio's total cases. Governor DeWINE didn't even mention it in his news briefing, as if it didn't exist. By May 6, 2020 1,746 prisoners were in isolation and the governor did nothing. When the news could no longer be hidden, Governor MIKE DeWINE pretended to be unaware. Governor DeWINE basically turned the situation over to Annette Chambers-Smith, the Director of the Ohio Department of Rehabilitation and Correction, who instituted a mere cursory policy of social distancing. Her policy entailed new cleaning, bunking, and dining room activities.

During a news briefing along with Governor MIKE DeWINE, Annette Chambers Smith gave a grand illusion of taking major efforts to provide for the safety of prisoners, but this illusion was only a cover-up for a callous disregard for the prison population. ANNETTE CHAMBERS SMITH's policies were akin to providing a bandage to a terminal cancer patient. At Lebanon Correctional Camp sinks and showers are cleaned three (3) times a day, while being used by nearly 200 prisoners with no cleaning between uses. Prisoners are given masks that don't protect you from getting COVID-19, but supposedly prevent you from spreading it. Prisoners wear masks outside the cubicles, except when they are shoulder to shoulder eating chow. The two (2) man cubicles are approximately 8'x8', but there is only a 2½ foot walking area. As for social distancing in the cubicles (which have bunk beds) one prisoner must sleep at the end of the bed where the other prisoner has his feet.

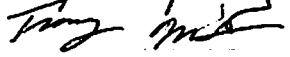
May 6, 2020 Marion Correctional Institution had the nations largest outbreak of COVID-19. Marion had 2,332 cases, comparing to Cuyahoga County with 2,398 cases, although the county has a vastly larger population. May 12, 2020 the Marshall

Project, a nonprofit news organization said Ohio has the countries highest rate of COVID-19 per inmate, with 47 dead and 4,300 testing positive, out of those tested. May 13, 2020 Governor MIKE DeWINE himself said, "the virus is still here, it's not going away." He further stated, "The Corona virus presents a risk, a dangerous risk." Yet he does nothing to alleviate the conditions posed by needless incarceration. Obviously, politics is far more important than human life.

May 19, 2020 Governor MIKE DeWINE, when referring to using known safety measures at bars and restaurants said, "They have an obligation to control the environment... or if they get in a situation where they can't control it, they need to close." Thus in his own words he takes personal responsibility. He further noted violators "will be personally cited." Governor MIKE DeWINE is not following his own laws, and discriminating against prisoners, thus denying us Due Process of Law, placing us in a dangerous and precarious environment causing psychological stress and possible physical harm or death which is Excessive Punishment (nobody was sentenced to), which culminates to Cruel and Unusual Punishment to the ultimate degree.

Governments all over the world are releasing prisoners in the name of justice and for the sake of mercy due to COVID-19. India has furloughed 11,000 prisoners, Ethiopia has released 4,000, even Iran in two (2) waves has released 85,000 out of custody. Imagine how this displays Governor MIKE DeWINE when in fact the Taliban shows more humanity than him. Michigan, California, New Jersey, Illinois have all released prisoners while MIKE DeWINE holds news conferences about the various schools that gave him neckties and who is the Boy Scout of the Year. Governor MIKE DeWINE needs to be held accountable for his lack of action and made to do the humane thing. Further he has caused the warden of Lebanon Correctional Institution to sully his reputation by proxy holding captives in a virulent situation.

GOVERNOR MIKE DeWINE's emergency release policy have identified less than 1% of eligible candidates for early release and resulted in seventy-three (73) prisoners and two (2) staff dead! Had the prisons not been so over-crowded COVID-19 would not have spread so rapidly. MIKE DeWINE allowed this to happen. How many people will have to die before MIKE DeWINE stops thinking politics? We pray the court to intervene.

Respectfully submitted,

 Clifton B. Pierson #735 767
 Denard Clark #747-087

RELIEF

IN THIS SECTION PLEASE STATE (WRITE) BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU. MAKE NO LEGAL ARGUMENT, CITE NO CASES OR STATUTES.

The defendants in the petition are well aware of their inhumane and illegal action, this is not an over-sight or accident, it is a well thought out and deliberate action of callus disregard. Therefore, the defendants should be held accountable and given incentive not to ever disregard life so flagrant and maliciously. Punitive damages would be such an incentive and make some amends for the fear, pain, and suffering they have caused. The plaintiffs therefore ask for \$3,000,000 (three million dollars) in punitive damages.

SIGNED THIS 15 DAY OF JUNE 2020

Clifton Pierson
SIGNATURE OF PLAINTIFF

Clifton Pierson
Demetrius Clark